IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7077 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7077 of 2001

MR PK JANI for Petitioner No. 1

MR K P RAVAL AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/07/2004

ORAL JUDGEMENT

1.1 The petitioner herein has challenged the order dated 11/02/1997 passed by the respondent - State

Government at Annexure 'C' to the petition, whereby, the petitioner was compulsorily retired from the service of the State Government w.e.f. 11/02/97 only prior to two months of his retirement.

2.1 The brief facts of the case are as follows;

The petitioner joined the services of the respondent in September 1961 as a Noting Assistant in the Education Department of the Government. He was promoted to the post of Section Officer in 1967 and in 1973 he was promoted to the post of Under Secretary. In 1991 the petitioner was deputed to Sardar Patel Institute of Public Administration as Dy.Director (Examinations). In 1992 the said Institute conducted departmental exam for internal promotions.

2.2 It is the case of the petitioner that a charge was levelled against him, as well as one Mr.S.K.Anand, who was working as Joint Director of the said Institute, on the ground that the petitioner had put up a note to the Joint Director (i.e. Mr.S.K.Anand) for the re-checking of the answer-sheets of unsuccessful candidates in the said departmental exam. The re-checking of the answer-sheets of unsuccessful candidates was permitted after approval from Mr.S.K.Anand. The say of the Department was that re-checking of answer-sheets was not permissible in view of the Resolution of the State Government dated 02/08/83. It was in this background that show cause notices came to be issued to the petitioner as well as to Mr.S.K.Anand.

2.3 It is the case of the petitioner that charge sheet came to be issued to him on 16/06/94. Inquiry was initiated against the petitioner as well as Mr.S.K.Anand. The petitioner submitted his representation in opposition to the findings recorded by the Inquiry Officer, but, the same was rejected by the respondent State Government. Considering the date of birth of the petitioner, the petitioner would have reached the age of superannuation on completion of 58 years and would have retired on 31/03/97. But on account of the aforesaid incident, the petitioner came to be compulsorily retired from service on and with effect from 11/02/97, just before a month of his regular retirement.

2.4 Thereafter, the petitioner submitted representations dated 16/06/97 & 11/11/97 to the respondent for granting him pension on compassionate grounds. But the said requests of the petitioner was turned down by the respondent State Government by

communication dated 09/06/99.

3.1 The petitioner preferred S.C.A.No.1119/01 praying for appropriate directions against the State Government for the release of pension and gratuity to the petitioner. The said application was heard in Appeal and the Division Bench of this Court permitted the petitioner, respondent therein, to withdraw the aforesaid S.C.A. with a liberty to file a fresh petition with all grounds and objections. Hence, this petition.

4.1 Mr.P K Jani learned advocate for the petitioner has relied upon a decision of the Apex Court in the case of State of Gujarat v. Umedbhai M. Patel reported in (2001) 3 SCC 314 (A.I.R. 2001 SC 1109) and more particularly, para 11 of the said decision, which reads as under;

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized thus;

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential

record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

4.2 Mr.P K Jani learned advocate for the petitioner has submitted that the order dated 11/02/97, which is the subject matter of this petition, is itself a punitive order. Therefore, in view of the law laid down by this Court in the case of State of Gujarat v. Umedbhai M. Patel (supra) and more particularly the Eight Clauses, this order is required to be quashed and set aside.

4.3 Mr.Jani for the petitioner has submitted that the petitioner had not ordered for the re-checking of the answer-sheets of unsuccessful candidates, but, he had simply put up a note to that effect to the Joint Director (i.e. Mr.S.K.Anand). He further submitted that it was Mr.S.K.Anand who had granted permission for the re-checking of the answer-sheets of unsuccessful candidates. Therefore, the order of 'compulsory retirement' against the petitioner is required to be quashed and set aside.

5.1 Mr.K P Raval learned AGP for the respondent has submitted that the petition is required to be rejected on the ground of delay and latches itself. He has submitted that ample opportunities were given to the petitioner before imposing the aforesaid penalty. Therefore, no interference is called for by this Court under Article 226 of the Constitution of India.

5.2 Mr.Raval has further submitted that the case of the petitioner cannot be compared with the case of Mr.S.K.Anand who was a co-accused. He submitted that charge sheet was issued to Mr.Anand on 30/09/93 i.e. on the date of his superannuation, but, he was granted pensionary benefits provisionally. He submitted that the inquiry report was received by the Government on 19/01/96. But before obtaining the final representation of Mr.Anand with regard to the inquiry report, he expired on 01/05/96. Therefore, it was decided by the Government to drop the pending inquiry against Mr.Anand vide Government order dated 15/06/96. Mr.Raval has, therefore, submitted that the fact that the State Government had treated two similarly situated persons in a different manner was misconceived and had no basis.

6.1 I have heard the learned advocates for the respective parties and have gone through the documents placed on record. In view of the law laid down by the

Apex Court in the case of State of Gujarat v. Umedbhai M. Patel (supra) and more particularly the Eight Clauses, the penalty of compulsory retirement imposed on the petitioner is not permissible under law. Therefore, the order dated 11/02/97 passed by the State Government is required to be quashed and set aside.

7.1 For the foregoing reasons, this petition is allowed. The impugned order dated 11/02/97 passed by the State Government (Annexure 'C') by which the petitioner was ordered 'compulsory retirement' is quashed and set aside. The petitioner is ordered to be treated as on retirement on his attaining the age of superannuation, i.e. on 31/03/97 and will not be entitled for salary for the period from 11/02/97 to 31/03/97. The State Government to fix the salary of the petitioner for the aforesaid period, assuming him to be on duty, without any break and to pay all the retiral benefits along with arrears to the petitioner, within a period of four months from the receipt of this order. If there is any delay in making payment to the petitioner, then the petitioner will be entitled to interest @ 9% per annum and the said amount will be recovered from the account of the erring Officer. Rule is made absolute accordingly with no orders as to costs.

(K. S. Jhaveri, J.)

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